

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Writ Petition No.5520 of 2024

Bharati Sakharam Nandgaonkar,
Aged about 50 years, Occu. Service
residing at B-104, First Floor,
Mukti Narayan Society,
Laxmiben Cheda Marg,
Nalasopara (West),
Tal. Vasai, Dist. Palghar

... Petitioner
(Original Complainant)

versus

1. Gajanan Dattaram Shinde
Aged 56 years, Occu. Retired
residing at Room No. B/108,
1st Floor, Torna Society
Nilemore, Nalasopara (West),
Vasai, Dist. Palghar

... Original Accused

2. The State of Maharashtra
Through Nalasopara Police Station
Nalasopara (West),
Taluka Vasai, Dist. Palghar

... Respondents

Ms Suvarna Telgote, for the petitioner.
Ms Sangita Phad, APP, for respondent No.2/ State.

**Coram: R.N. Laddha, J.
Date: 7 March 2025.**

P.C.:

By this petition, the petitioner seeks to challenge the order
dated 10 July 2023 passed by the learned Additional Sessions

Judge, Vasai, in Criminal Revision Application No.35 of 2023, and restore the order dated 30 March 2023 passed by the learned Judicial Magistrate First Class, Vasai, in RCC No.532 of 2010.

2. The petitioner lodged a first information report bearing No.220 of 2009, registered at Nalasopara Police Station, Palghar, for the offences punishable under Sections 354, 457, and 380 read with 34 of the Indian Penal Code ('IPC') alleging that one Snehalata Shinde and respondent No.2 unauthorisedly entered the petitioners house and stole valuable articles and Rs.1,30,500/- in cash. Subsequently, respondent No.2 filed a charge sheet against Snehalata only. Aggrieved, the petitioner approached the Division Bench of this Court in Writ Petition No.2726 of 2013. By an order dated 5 February 2014, the Division Bench disposed of the petition. Subsequently, the petitioner filed an application before the trial Court praying issuance of summons to respondent No.1, the proposed accused, as PW-1 testified that respondent No.1 resided in the alleged room where the incident occurred and the investigating officer omitted to record respondent No.1's involvement in the crime.

3. By an order dated 30 March 2023, the learned Magistrate allowed the petitioner's application, issued summons to

respondent No.1, and took cognisance of offences punishable under Sections 454, 457 and 380 of the IPC against respondent No.1. Respondent No.1 challenged this order in revision application No.35 of 2023 before the Additional Sessions Judge, Vasai. By an order dated 10 July 2024, the revision was allowed and the summoning order was set aside. Dissatisfied, the petitioner has approached this Court in its writ jurisdiction.

4. Heard Ms Suvarna Telgote, the learned Counsel appearing on behalf of the petitioner, and Ms Sangita Phad, the learned Additional Public Prosecutor representing the respondent/State.

5. The power conferred under Section 319 of the Code of Criminal Procedure, 1973, is discretionary and extraordinary. It should be exercised sparingly and only in cases where the circumstances genuinely justify its invocation. This power is not to be used merely because the Magistrate or the Sessions Judge believes that another person may also be guilty of the offence. It should be exercised only when strong and compelling evidence emerges from the proceedings before the Court, and not in a routine or arbitrary manner.

6. It is a well-settled principle in law that the courts should issue prior notice to an individual, requiring them to show

cause as to why they should not be arraigned as an accused. The order should be passed only after providing such a person with an opportunity to be heard. If an order summoning an individual under Section 319 CrPC is issued without prior notice, it will not withstand legal scrutiny. Furthermore, whenever a person is to be summoned as an additional accused under Section 319 CrPC, the Court must not only issue prior notice but also exercise extra caution to ensure that there is compelling evidence to justify such action.

7. In the present case, the petitioner, during her examination-in-chief, did not mention the name of respondent No.1. She also did not state that respondent No.1 was present at the scene of the incident. Moreover, there is no evidence in the form of examination-in-chief to suggest that respondent No.1 had any involvement in the alleged crime. Additionally, the record indicates that while deciding the application, the trial Court considered only the submissions of the petitioner and the learned APP. It was imperative for the trial Court to provide respondent No.1, as the proposed accused, an opportunity to be heard before taking cognisance of the offence against him. However, in this case, no such notice was issued to respondent No.1, which amounts to a procedural lapse.

8. In light of the above, no infirmity is found in the order

dated dated 10 July 2023 passed by the learned Additional Sessions Judge, Vasai, in Criminal Revision Application No.35 of 2023. The petition stands dismissed accordingly.

(R.N. Laddha, J.)